

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANGELOSI COMPANY, INC.

*Plaintiff,*

v.

DEPOSITORS INSURANCE COMPANY

*Defendant.*

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CIVIL ACTION NO. 4:19-cv-1127

**NOTICE OF REMOVAL**

Defendant Depositors Insurance Company (“Depositors” or “Defendant”), through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, files this Notice of Removal of the lawsuit captioned *Cangelosi Company, Inc. v. Depositors Insurance Company*; In the 458<sup>th</sup> Judicial District of Fort Bend County, Texas.

**I.  
BACKGROUND**

Plaintiff Cangelosi Company, Inc. (hereinafter “Plaintiff”) initiated the present action by filing its Original Petition in Cause No. 19-DCV-260286; in the the 458<sup>th</sup> Judicial District of Fort Bend County, Texas on March 6, 2019 (the “State Court Action”). See Plaintiff’s Original Petition, attached as **Exhibit A**.

1. Defendant appeared and answered on March 27, 2019, asserting a general denial to the claims and allegations made in Plaintiff’s Original Petition. See Defendant’s Original Answer, attached as **Exhibit B**.

2. Pursuant to 28 USC § 1446(a) all a copy of all process, pleadings, and orders served upon Defendant in the State Court Action are incorporated in **Exhibit A**. Pursuant to Local Rule 81, a full copy of the state court file has been requested and will be filed upon receipt.

3. Pursuant to 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Defendant will give written notice of the removal to Plaintiff through its attorney of record, and to the clerk of the 458<sup>th</sup> Judicial District of Fort Bend County, Texas.

4. Pursuant to 28 USC §§ 1446(b)(1) and 1446(c)(1) this Notice of Removal has been timely filed within 30 days of service on Defendant of Plaintiff's Original Petition and less than one year after the commencement of this action.

## **II. JURISDICTION**

5. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and the matter is removable to this Court pursuant to 28 U.S.C. § 1441(a) because there is complete diversity of citizenship between the properly joined parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

### **A. Diversity of Parties**

6. Plaintiff is domiciled in Fort Bend County, Texas. *See Exhibit A, ¶ 1.* Pursuant to 28 U.S.C. § 1332(a), therefore, Plaintiff is a citizen of the State of Texas.

7. Depositors Insurance Company is organized under the laws of Ohio and maintains its principal place of business in Ohio. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Depositors is a citizen of the State of Ohio.

8. Accordingly, there is complete diversity between the parties pursuant to 28 U.S.C. § 1332(a).

**B. Amount in Controversy**

9. Plaintiff's Original Petition states that Plaintiff seeks "at least \$604,427.98 less the applicable deductible." *See Plaintiff's Original Petition, Exhibit A, ¶ 4.* The threshold for diversity jurisdiction, \$75,000, is therefore met by the allegations of Plaintiff's Original Petition.

10. Plaintiff further seeks compensation for (1) actual damages, (2) treble damages, (3) attorney's fees through trial and appeal, (4) pre and post-judgment interest, and (5) costs of court. *See Exhibit A, ¶¶ 14-24.* Plaintiff has alleged that Defendant's conduct was wrongful and done knowingly, entitling him to a trebling of actual damages under Texas Insurance Code Chapter 541. *See Exhibit A, ¶ 21;* Tex. Ins. Code sections 541.002 & 541.152. Penalties, exemplary damages, and attorneys' fees are included as part of the amount in controversy.<sup>1</sup>

11. The amount in controversy plainly exceeds \$75,000, exclusive of interest and costs. *See Exhibit A.* Accordingly, the amount in controversy requirement of 28 U.S.C. § 1332(b) is satisfied.

**III.  
CONCLUSION**

12. Removal of this action under 28 U.S.C. § 1441(a) is proper as the district courts of the United States have original jurisdiction over the matter pursuant to 28 U.S.C. § 1332, and as all requirements for removal under 28 U.S.C. § 1446 have been met.

13. WHEREFORE, Defendant Depositors Insurance Company hereby provides notice that this action is duly removed.

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<sup>1</sup> *See H&D Tire & Automotive-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 330 (5th Cir. 2000); *see also St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

Respectfully submitted,

*/s/ Patrick M. Kemp* \_\_\_\_\_

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DEPOSITORS INSURANCE COMPANY**

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing instrument has been served via certified mail, return receipt requested this the 27<sup>th</sup> day of March, 2019 to:

Douglas E. Koger  
24275 Katy Freeway, Suite 400  
Katy, Texas 77494

**9414 7266 9904 2137 9588 84**

*/s/ Patrick M. Kemp* \_\_\_\_\_  
Patrick M. Kemp